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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,424	03/26/2004	Sun Lee	549112000100	2621
25225	7590	09/15/2006	EXAMINER	
MORRISON & FOERSTER LLP 12531 HIGH BLUFF DRIVE SUITE 100 SAN DIEGO, CA 92130-2040			CRAIG, PAULA L	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/811,424	LEE, SUN	
	Examiner	Art Unit	
	Paula L. Craig	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 4, 7-9 and 11-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/4/04</u>  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I and Species A in the reply filed on June 26, 2006 is acknowledged. Claims 4, 7-9, and 11-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group or species, there being no allowable generic or linking claim.

### ***Specification***

2. The disclosure is objected to because of the following informalities: The Brief Description of the Drawings in paragraph 16 of the specification, does not correspond to the drawings filed August 16, 2004, as there is no indication of Figs. 3a, 3b, and 3c. Appropriate correction is required.

### ***Drawings***

3. Figures 1A and 1B should be designated by a legend such as --Prior Art-- because only that which is old is illustrated (specification, paragraphs 23, 33, 34, and 41). See MPEP § 608.02(g). In addition, the drawings are objected to for the reasons indicated on the enclosed Form PTO-948. Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing

figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5-6, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,810,836 to Hussein et al.

6. For Claim 1, Hussein teaches an implantable device for external effecting perfusion of oxygenated blood into myocardial tissue from a left ventricle (Abstract, Figs. 1-6, col. 1, lines 9-13, col. 2, lines 17-40, and Claims 1 and 9-11). The device has a shaft having an aperture running longitudinally therethrough (shaft is coil spring body 21, tubular body 1, threaded body 9, hollow coil body 16, coil body 26, or cylindrical body 28; Figs. 1-6, col. 3, lines 14-48, and Claims 1 and 9-11). The shaft includes a proximal end terminating in a point (Figs. 1-6). A distal end is adapted to be detachably secured to the outside of the myocardial tissue (such as by anchoring wire 65, closures 5 or 12, anchor 18, or anchoring coil 27; Figs. 1-6, col. 3, lines 14-48, and Claims 1, 4-7, and 9-11). The proximal end and the distal end are spaced to allow the proximal end to enter the left ventricle (Figs. 1-6, col. 2, lines 18-29, and Claims 1, 4, and 9-11). The

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shaft includes at least one opening into the aperture between the proximal end and the distal end (spacings 23 or side ports 3, 11, and 17, Figs. 1-6, col. 3, lines 14-48, and Claims 1, 3, 5, 6, and 9-11).

7. For Claim 2, Hussein teaches the shaft being curved (Fig. 4 and col. 3, lines 31-36).

8. For Claim 3, Hussein teaches the shaft being U-shaped (Fig. 4 and col. 3, lines 31-36; note that portions of the coil are U-shaped).

9. For Claim 5, Hussein teaches the shaft being blunted on the distal end (Figs. 1-6).

10. For Claim 6, Hussein teaches the aperture being coated with a substance (col. 4, lines 26-36, and Claim 2).

11. For Claim 10, the substance taught by Hussein is fully capable of eluting from the aperture to at least some extent (col. 1, line 61, to col. 2, line 1, col. 4, lines 26-36, and Claim 2).

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 5,935,119 to Guy et al. shows a device for perfusion of oxygenated blood into myocardial tissue having a shaft with a longitudinal aperture, and openings into the aperture. U.S. Patent No. 5,980,548 to Evans et al. teaches myocardial inserts including flowable materials, pharmaceuticals, and the like. U.S. Patent Application Publication Nos. 2001/0014813 to Saadat et al. and

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2003/0055371 to Wolf et al. each teach an implantable device for perfusion of oxygenated blood into myocardial tissue, having a U-shaped shaft with an aperture, and openings into the aperture between the proximal end and the distal end. The remaining prior art references listed on the accompanying Form PTO-892 show the general state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571 )272-5964. The examiner can normally be reached on 6:30AM-3:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paula L Craig  
Examiner  
Art Unit 3761

PLC

TATYANA ZALUKAEVA  
SUPERVISOR, PRIMARY EXAMINER  
